

19-5737

PASC No. 405 WAL 2018

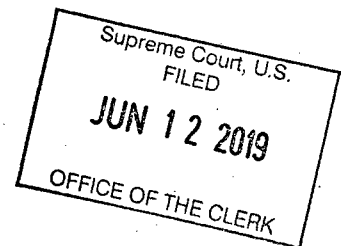
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Jerome Burnam, Petitioner,

V.

Mark v. Capozza, Superintendent et al.,
of the State Correctional Institution at
Fayette, 48 Overlook Drive, LaBelle
Pennsylvania 15450-1050
Respondent(s)



ON PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

PETITION FOR WRIT OF CERTIORARI

Jerome Burnam, BA-6023
SCI-Fayette, 48 Overlook Drive
LaBelle, PA 15450-1050

QUESTIONS PRESENTED

Where the issue involves the Constitutionality of the statute of the Commonwealth.

- I. Whether Writ of Mandamus jurisdiction was abridged or if this Petitioner's Due Process Rights were Denied to Meaningful opportunity to seek Redress, for an issue surrounding Re-sentencing, when Re-sentencing Court failed to State its Reasons on the Record for the Imposition of its Sentence ?

LIST OF PARTIES

All Parties do not Appear in the Caption of the case on the Cover Page. A list of all Parties to the Proceeding in the Court whose judgment is the subject of this Petition is as follows :

Allegheny Court of Common Pleas of Allegheny County
Courthouse, 436 Grant Street
Pittsburgh, PA 15219
Case Number: 1988-13518/1989-01399

Superior Court of Pennsylvania
Office of the Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
No. 1544 WDA 2015/1674 WDA 2017

Superme Court of Pennsylvania
Western District
Office of the Prothonotary
801 City-County Building
Pittsburgh, PA 15219-2463
Case Number: 405 WAL 2018

The United States District Court
U.S.Post Office & Courthouse
700 Grant Street
Pittsburgh, PA 15219
Case Number: 09-108

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- APPENDIX "B"** March 8, 2010: U.S. District Court Report and Recommendation
- APPENDIX "C"** July 14, 2016/August 23, 2018:: Superior Court Memorandum
- APPENDIX "D"** August 29, 2017/October 10, 2017:: Lower Courts Notice of Intent
- APPENDIX "E"** March 20, 2019 : PA. Supreme Court Denying Allowance of Appeal
- APPENDIX "F"** April 1, 2002: Judge Dauer's , Law Clerk Reply Letter
- APPENDIX "G"** December 31, 1991: Trial Judge, Ruling/ Memorandum Order
- APPENDIX "H"** July 24, 2000: Letter from Defense Attorney
- APPENDIX "I"** November 15, 2001: Letter from Defense Attorney
- APPENDIX "J"** November 18, 2002: Judge Kelly's Opinion
- APPENDIX "K"** April 9, 2001: Defense Counsel's 1925(b) Statement of Matters

CERTIFICATE OF COMPLIANCE

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINION BELOW

Federal Court:

The Opinion of the United States Court of Appeals appears at Appendix "A" to the petition and is reported at **10-2330** is unpublished.

The Opinion of the United States District Court appears at Appendix "B" to the petition and is reported at **09-108** is unpublished.

State Courts:

The Opinion of the Highest State Court to review the merits appears at Appendix "C" to the petition and is reported at **1544 WDA 2015 / 1674 WDA 2017** is unpublished.

The Opinion of the Allegheny Common Pleas Court appears at Appendix "D" to the petition and is reported at Case Number(s) **1988-13518 /1989-01399** is unpublished.

JURISDICTION

Federal Courts:

The date on which the United States Court of Appeal decided my case was **May 19, 2010**. A timely petition for rehearing was denied by the United States Court of Appeal on the following date: **January 19, 2011**, and a copy of the Order denying rehearing appears at Appendix "A"

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

State Court:

The date on which the highest state court decided my case was **February 11-15, 1991**. A copy of that decision appears at Appendix "C".

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)

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STATEMENT OF THE CASE

The Petitioner in this matter is Jerome Burnam, who is currently incarcerated at SCI-Fayette, LaBelle, Pennsylvania 15450. On May 8, 1990, the Superior Court entered an Order at **14 PGH 1989** that reversed the trial Court's Order, vacated the Petitioner's judgment of sentence and remanded his case for a new trial. On February 11, 1991, the Petitioner appeared before the late Honorable Judge Joseph H. Ridge again to be tried on the Criminal Homicide and Robbery Charges. During those proceedings, the Petitioner Plead Guilty to a General Charge of Criminal Homicide, based upon Defense Counsel's Negotiated Plea Agreement with the Respondent's Office for a verdict "To Something Less Than Second Degree Murder". On February 25, 1991, Petitioner Voiced Trial Counsel's Ineffectiveness During Post-Trial Motions. This action caused the Court in a **Memorandum Opinion** to Order an Evidentiary Hearing. Subsequently, on December 11, 1991, Petitioner's Post-Trial Motions were continued "Generally", some Seven(7) Years later the effect of Petitioner's December 11, 1991 Post-Trial Motions Proceedings, resulted in the Petitioner being Re-Sentenced to First Degree Murder, and Life Imprisonment on December 7, 1998, without the late Re-

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Sentence Court Judge Robert E. Dauer's 'Reasons for the Sentence being placed on the Record, and without Petitioner present to speak in his Defense; and without the Court's determination of factual set forth in an Opinion or a final Order.

On February 27, 2014, Petitioner Properly Exhausted all State Court Appellate Remedies with the United States Court of Appeal at Docket No. **14-1200**.

IN THESE COLLATERAL PROCEEDINGS

On December 23, 2014, Petitioner filed Petition for Writ Habeas Corpus Ad Subjiciendum. On January 21, 2015, President Judge, Jeffrey A. Manning, filed Order that gave "Notice of Intention to Dismiss", pursuant to **Pennsylvania Rules of Criminal Procedure(Pa.R.Crim.P.) rule 907**, the Petitioner's Writ of Habeas Corpus Ad Subjiciendum because listed reasons :

"**1.** This is the Defendant's second or subsequent request for relief and he failed to set forth any facts that would establish a miscarriage of justice; and

2. The Defendant's petition is untimely".

On February 17, 2015, Petitioner filed "**Objections**" : That contested Judge

Manning's Order of "Intention to Dismiss", its characterization of the defendant's petition for Writ of Habeas Corpus as more properly titled a Petition for Relief under the **PCRA**, and its error in Law to adjudge pursuant to **PCRA rule 907** the Writ of Habeas Corpus Ad Subjiciendum.

On February 17, 2015, Petitioner filed also, an "ADDENDUM TO RELATOR'S WRIT OF HABEAS CORPUS AD SUBJICIENDUM".

On February 24, 2015, Judge Manning filed Order that Denied Petition for Post-Conviction Collateral Relief Act/IFP Granted.

On August 25, 2015, Petitioner sent a letter to the Allegheny Clerk of Court Offices that asked whether the Court had addressed the Petitioner's "Objections" to its "Notice of Intention to Dismiss the Petitioner's Writ of Habeas Corpus Ad Subjiciendum.

On September 2, 2015, Petitioner was only informed, by review of Docket Statement in reply letter sent from Allegheny County Clerk of Court Offices, that Seven Month earlier on February 24, 2015 that Judge Manning had entered a final Order, pursuant to **PCRA rule 907**, that denied the Petitioner's Writ of Habeas Corpus Ad Subjiciendum.

SUBSEQUENT PROCEEDING

On September 22, 2015, within 30 dayes of Petitioner being informed about Judge Manning's final Order on February 24, 2015, the Petitioner filed a Notice of Appeal in the Superior Court of Pennsylvania at Docket No. **1544 WDA 2015**.

On October 21, 2015, Petitioner acted to protect his Appellate Rights and Notice to Appeal Rights Nonc Pro Tunc, when he filed with Allegheny County Clerk's Office a **PCRA** petition to have that Court to preserve the same herein issue of Breakdown of Judicial Process.

On November 4, 2015, the Superior Court of Pennsylvania entered Order instructed Petitioner to Show Cause, why the Appeal should not be Quashed as untimely, in the form of a letter addressed to the Prothonotary Office.

On November 16, 2015, Petitioner filed a letter that complied with the Court's Order.

On November 16, 2015, Judge Jeffrey A. Manning entered Notice of Intent to Dismiss **PCRA**.

On December 8, 2015, the Superior Court of Pennsylvania entered **Order** held "the Court having received a response to its order dated **November 4, 2015**, the

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rule is **Discharged** and the Appeal shall proceed".

On December 21, 2015, Petitioner presented **Objections** to Judge Manning's Notice of Intent to Dismiss.

On January 12, 2016, the Allegheny County Clerk of Court Office forward to the Petitioner copy of the certificate and transmittal of record to Appellate Court. An entry thereon is made on December 22, 2015 shows that Judge Manning had filed an opinion of the Court.

On January 20 2016, Petitioner write a Letter to the Clerk of Court Office seeking information whether indicated opinion was Judge Manning's entered in regard above **PCRA** file on October 21, 2015, no reply has been received at this filing.

Petitioner after Exhausting all adequate and alternative remedies (**concerning the Clerk of Court's failure to Mail Petitioner a copy of the Judge final Order to Petitioner's place of confinement**), Petitioner Notice that he still did not have the Re-sentencing Judge Opinion or his Re-sentencing Decision(Transcript).

On June 26, 2017, Petitioner file a pro se "Petition for Writ of Mandamus and/or Extraordinary Relief". The Honorable Jeffrey A. Manning in a Order dated

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August 29, 2017, issued Notice of his Intent to Dismiss Petitioner's Petition. In an Order entered on the record on October 10, 2017, Judge Manning denied Petitioner's Petition, which the Court labeled the Petition pursuant to the **PCRA**.

On November 9, 2017, Petitioner filed a pro se Notice of Appeal to the Superior Court of Pennsylvania, the Court in a Memorandum Ruling Affirmed the Lower Court's Decision on August 23, 2018.

On September 25, 2018, Petitioner filed a "Petition for Allowance of Appeal" in the Supreme Court of Pennsylvania. On March 20, 2019, the Supreme Court Denied Petitioner's petition for Allowance of Appeal. [Id. at **Appendix "E"**

And this Writ of Certiorari Follows :

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REASON FOR GRANTING THE PETITION

I.

The District Court, and the Pennsylvania Supreme Court Decision is Contrary to the Law, because Mr. Burnam (petitioner herein) was Denied his Federal Constitutional Rights, his Equal Protection of the law and his Due Process of the Law when the Integrity of the Court has been Compromised by the implementation removing Legal Advocate and Subverting the Judicial System; Thus, violating Petitioner's Pennsylvania and United States Constitutional Rights to Due Process and Equal Protection, which is Governed by Petitioner's Rights under Acticle 1, Section 9 of the Constitution, U.S.C.A. § Due Process and U.S.C.A. § Equal Protection to the Constitution of America.

Moreover, Petitioner argues that this case during Resentencing should not have arise to Life imprisonment. As-A-Matter-of-Fact, Petitioner's retrial proceeding show that the inception of this 'complaint' arose from Post-Trial motions, which resulted in a **Memorandum of Law** derived from Supplemental Post-trial Motions. What remained from these Post-trial Motions was "a hearing on the claims of 'Ineffective Assistance of Counsel', and the necessary result of either the Affirmation of the Death Penalty or other relief".

On February 25, 1991, Petitioner voiced trial counsel's ineffectiveness, on December 11, 1991, Petitioner's Post-trial Motions were continued "Generally". Some eight (8) years later, the results of Petitioner's December 11, 1991, Post-trial Proceeding resulted in Petitioner being Resentenced to First Degree Murder, and Life imprisonment on December 7, 1998 without a Court Opinion or the Reasons for the Sentence being placed on the record, and not in the presence of Petitioner.

It is beyond cavil that in this instant case, a 'Riggins' violation has occurred when the re-sentencing Court failed to place on the record at re-sentencing, and

absent a Court Opinion, the reasons for the sentence imposed. See

Commonwealth v. Riggins, 474 Pa. 115, 377 A.2d 140 (1977), where Mr. Justice Roberts of our State Supreme Court wrote in his opinion for the Court, "... We are persuaded that the sentencing process will be improved by requiring a trial court to state, on the record, the reasons for the sentence imposed." [id. at 474 Pa.

137] Likewise a similar case for this instant case be found in Commonwealth v. Mullen, 321 Pa.Super. 19, 467 A.2d 871 (1983), Thereat the Superior Court having to decided an issue, where the defendant Mullen claimed that the trial court did not state sufficient reasons on the record for the sentence it imposed, while also contending that the reconsideration of sentence procedure could not correct the

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initial inadequate sentencing. The Court found that "No case specifically holds that the reasons {for the sentence} be recorded during a sentencing hearing, and that they be made within the presence of the defendant". [Id. at 321 Pa.Super. 23}, going on to cite 'Young', even though in that case the Court had filed an opinion stating its reasons relied upon for sentencing 'Young', by stating :

"One compelling reason for Riggins' requirement is that without a statement of reasons at the time of sentencing the defendant lacks an opportunity at that time to bring to the Court's attention any erroneous facts or conclusion upon which it may have relied and is unable thereafter to file a petition for sentencing challenging the court's reasons for imposing sentence". Young, supra., 272 Pa.Super. Ct. 84, 414 A.2d 681 (1979).

Although the dissenting opinion by the Honorable Judge, Wieand, agreed with the En Banc Court in 'Mullen', insofar as there being a need for perfect compliance with the mandates of 'Riggins'. Yet the Honorable Judge Wiend proposed that, "However, sentencing proceedings are not concluded irrevocably when sentence is initially imposed, they continue even through Appellate review. Commonwealth v. Anderson, 304 Pa.Super. 476, 482 A.2d 1011 (1982). The means by which errors can be corrected by the sentencing Court have not been rigidly limited or narrowly defined by substantive or procedural rule or law." Id. at

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321 Pa.Super. 26. "The Majority hold that the additional reasons cited in the Court's Order may not recited in Petitioner's presence. Therefore, the Majority remands so that the Court may repeat its recorded reasons in Petitioner's presence," *Id.* at 321 Pa.Super. 27.

The Honorable Judge Wieand's statement seems to suggest that the Majority's ruling in 'Mullen' is an exercise in futility, of which this writer does concede. In view of the rising cost of litigation, and the over burdening of frivolous appeals presented to the courts, there may be circumstances where alternative remedies may be deemed proper in the future. Apropos of this instant case, even Judge Wieand's solution can not cure the instant case where the Trial Court failed to even submit a Court Opinion. In light of such a circumstances, it is clear how Mr. Justice Stewart, {while a judge on the Sixth Circuit Court of Appeals}, observed: "Justice is measured in many ways, but to a convicted criminal its surest measure lies in the fairness of the sentence he receives". Shepard v. United States, 257 F.2d 293, 294 (6th cir. 1958).

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Undoubtly Mr. Justice Stewart's observance that, "[sentencing is a] most important dimension of fundamental justice." *Id supra.*, was a contributing factor in the United States Supreme Court's finding that, "It is now clear that the sentencing process, as well as the trial itself must satisfy the requirements of the Due Process." See Gardner v. Florida, 423 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977)(plurality opinion), Mr. Justice Stevens. Consequently, where the Court in this instant case failed to give the reasons for the sentence imposed upon the Petitioner, and neglected to write an Opinion in this instant case, the Petitioner's Due Process has been violated. It because obvious why the Superior Court En Bac, concluded, [As should this Honorable Court], "... {T}hat because the reason given for the lower Court's imposition of sentence does not comport with *Riggins*, we are constrained to vacate the judgement of sentence and remand for resentencing." *Id supra* at 231 Pa.Super. 25.

Even though there has been a clear 'Riggins' violation in the instant case, had the sentence vested upon the Petitioner been commensurate to the Plea Agreement with the Commonwealth, then surely, for the Petitioner to seek Redress on the wings of a 'Riggins' violation would be an exercise in fruitility. Arguably, a cursory read-through of the Colloquy of February 11, 1991, shows a

complete and firm colloquy, rendering any further complaints the Petitioner may claim frivolous. However, upon a close and detailed review, there can be no argument that to a layman, never facing a legal courtroom as an adolescent or an adult, thus would be inexperienced in the legal ramifications of the colloquy given. Especially when coupled with an understanding from his Defense Attorney that he would receive Third Degree if he Pled "General" to the Homicide Charge, and the Prosecutor verifying Petitioner's belief by stating on the record to the Court that "We are seeking Something Less Than Second Degree, that because of the Mitigating Circumstances' weight against the Aggravating Circumstances", coupled with the Court stating "it seem that somehow this turns into ... you pleading to Third which is General, but it seem to fall somewhere to Third Degree." Demonstrates that a reasonable person of sound mind would believe that he was going to be sentenced to a term of sentence that had a maximum and minimum, not the Death Penalty, or Eight (8) years later, re-sentenced to First Degree Homicide, and life imprisonment. This surreal memory was foremost in the Petitioner's mind as he was brought before the late Honorable Robert E. Dauer for re-sentencing. Though the sentence of Death occurs prior to the re-sentencing, and the late Judge Dauer as resentencing Judge, is responsible for correcting the error by the late Judge Joseph H. Ridge. Yet still the resulting

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correction of being found guilty of First Degree Homicide with life imprisonment could not and did not cure the original sentence by replacing it with another, albeit lesser, illegal sentence. Absent an on-the-record reason for the resentencing or a Court Opinion, only a look at the law can be stated herein to give aid to this Honorable Writ of Mandamus Court, where it follows that where Petitioner is challenging the propriety of his sentence, he should do so first at the trial Court level, See Commonwealth v. Clair, 458 Pa. 418, 236 A.2d 272 (1994).

It is long established that if a defendant is charged with murder, acceptance of the guilty plea is to murder general, the Commonwealth then has the burden to establish the particular degree of murder at a degree of guilt hearing, See Commonwealth v. Appel, 547 Pa. 171, 689 A.2d 891, 895 n.3 (1997). However, it is the Petitioner's contention that where the Plea has been entered in return for a Negotiated on-the-record recommendation of a particular sentence of "Something Less Than Second Degree", by the Commonwealth, Petitioner is entitled to withdraw his Plea because the Trial Judge did not advise him that he could withdraw the Plea if the Judge wishes to impose a higher sentence. Conversely, if the trial Judge had expressly warned the Petitioner that the sentence may exceed the recommendation there would be no right to withdraw

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his Plea, See Commonwealth v. Porreca, 528 Pa. 46, 595 A.2d 23 (1991)(en banc), Appeal Denied 528 Pa. 622, 597 A.2d 1151 (1991).

Given that the colloquy demonstrates a "General" plea was tendered on the one hand, while simultaneously the Commonwealth offering a plea agreement, and the Court acknowledging this agreement in open court for something less than second degree, coupled with the defense Attorney stating the Petitioner would receive a third degree sentence, the Petitioner begs this Honorable Court to conclude that the most that can be said of the colloquy is that it is ambiguous, and the ambiguity should be construed in favor of the Petitioner, See Commonwealth v. Kroh, 440 Pa.Super. 1, 654 A.2d 1168, 1173 (1995)("Although the agreement is ambiguous ... we will construe this ambiguity against the Commonwealth,); Innes v. Dalsheim, 864 F.2d 974 (2nd Cir. 1988), cert. denied 493 U.S. 809, 110 S.Ct. 50, 107 L.Ed.2d 19 (1989).

PRESERVATION OF ISSUES

II

Whether Writ of Mandamus Jurisdiction was abridged or if this Petitioner's Due Process Rights were Denied to Meaningful opportunity to seek Redress, for an issue surrounding Re-sentencing, when Resentencing Court failed to State its reasons on the Record for the Imposition of its sentence.

Petitioner avers that he should have had a new hearing to Redress the Claims that was set-forth back in **April 2, 2002** [Id. at **APPENDIX "F"**], right after the passing of the Re-sentencing Judge, Robert E. Dauer. Since Petitioner was force to undergo an Direct Appeal on issue's that has been already decided and Adjudication taken place [Id. at **APPENDIX "G"**], and right after Exhausting all Adequate and Alternative Remedies, Issue's that was decided by Post-Trial Proceeding; Petitioner Contends that those proceeding in essence amounted to nothing more than a 'Smoke-Screen'. [Id. at **APPENDIX "A" & "B"**]

On June 26, 2017, Petitioner file a Pro se "Petition for Writ of Mandamus and/or Extraordinary Relief".

The Commonwealth refused to hold a hearing and redress Petitioner's Claims. However, on August 29, 2017, the Court issued a **907** Application explaining why Petitioner's petition would be dismiss. [Id. at **APPENDIX "D-1"**] Unfortunate, On October 10, 2017, the Court in its Order set-forth in the Notice of Intention to Dismiss filed August 30, 2017, Denied petitioner petition, but labeled it pursuant to the PCRA. [Id. at **APPENDIX "D-2"**]

Petitioner in a **Counterclaim**, states that he should have had an hearing to determine circumstances that had been going on back in July 24, 2000, and November 15, 2001. [Id. at **APPENDIX "H" and "I"**], instead the Commonwealth

wanted to make allegation that Petitioner has been properly Sentenced.

On November 18, 2002 the Honorable Judge Robert E. Kelly draft out an Opinion (since the Re-sentencing Judge had passed away) [Id. at **APPENDIX "J"**], that report show that Judge kelly's arguments was raised from Petitioner's April 9, 2001 "Statement of Matters Complained of on Appeal" application filed by Defense Counsel Robert E. Stewart esq., during Supplemental Post-Trial Proceeding [Id. at **APPENDIX "K"**]

Petitioner avers that those issues in Judge Kelly's Opinion are in Contrary with the late Judge Robert E. Dauer's Re-sentencing of the Petitioner; As-a-matter-of-fact, those issues was before the late Honorable Joesph H. Ridge, and sent to the late Honorable Robert E. Dauer during Supplemental Post-Trial And the reason why those issues went before Judge Dauer was because of Judge Ridge December 31, 1991 **Memorandum Opinion** . [Id. at **APPENDIX "G"**]

On December 7, 1998, the late Honorable Judge Robert E. Dauer set-aside the Death Penalty and Re-sentenced Petitioner to First Degree Homicide and Life imprisonment without an Court Opinion.

The Commonwealth by failing to Redress this Claim and refusing to remand this case back for further action, not only deprived the Petitioner of Due Process of Law, and his Equal Protection of the Law because they depended upon the Honorable Judge Kelly's draft out Opinion, which was articulated from Petitioner's April 9, 2001 Statement of Matters Complained of on Appeal, filed on behalf of Petitioner's Post Trial Motions .

Petitioner argues that since those issues had already been adjudicate by the Post-Trial Motions Judge, and the Supplemental Post-Trial Proceeding Judge, and a result of Petitioner being Re-sentenced without an Opinion, This Case should be sent back down to the Lower Court for Re-sentencing or Other Relief.

More accurately, thiyis instant case is a quagmire of Post-trial Motions, and Petitions, that are replete with a plethora of State Law violations, and State and Federal Constitutional violations, and justice would be served and Due Process Satisfied if an Officer of the Court cared to take up the true banner of lady Justice, and unmask these covert violations instead of giving this case a Lackadaisical approach by 'resting on their laurel's with the oft time used PCRA rubber stamp of 'waiver', procedural default; and jurisdictional time bar.' Which apropos, is not, and never has been applicable to the issue in the instant case, nor subject to the 'waiver' or 'time restraints' rules under the PCRA.

The facts are clear in the instant case, that a challenge to the legality of a Sentence can not be waived, conforms to Commonwealth v. Williams, 442 Pa.Super. 590, 660 A.2d 614 (1985); also Commonwealth v. Yount, 419 Pa.Super. 613, 615 A.2d 1316 (1992). In the instant case, the issue of the Rational of the Court in imposing sentence, lacking an Opinion from the Resentencing Judge, it is impossible to determine the cause behind the sentence imposed. Where Resentencing, absent an 'Opinion', does not reflect whether it was "Center[ed] upon the Court's Statutory Authority" to impose a sentence, or the "Court's exercised of discretion in fashioning" the sentence.

The issue raised implicates the legality of the sentence imposed. Especially, when the Court had before it a 'Recommendation' from the 'Commonwealth' of a Sentence of "Something Less Than Second Degree Homicide".

See Commonwealth v. Foster, at 609 Pa. 502, 17 A.3d 332 {2011 Pa.Lexis 681}; *Id.* at Appendix "L"

**The Facts Which These Claims are Predicated
Were Unknown to the Petitioner Despite Due Diligence**

42 Pa.C.S.A. § 9545(b)(1)(ii) requires facts upon which claims are predicated must have been unknown to the Petitioner, and could not have been learned by due

diligence. Hopefully, in regards Petitioner's claims' merits, its prudent and useful to review the details of diligence :

- 1) On **February 3, 2000**, Attorney Robert E. Stewart in reply letter stated that hearing of Supplemental Post Trial proceedings' and re-sentence Transcripts requested would be forth coming. See, **Appendix 1**
- 2) On **March 23, 2000**, Robert E. Stewart, Esq., letter shows Relator continued to request for copies of the "Court's Opinion" and Supplemental Post Trial proceedings' Transcripts. See, **Appendix 2**
- 3) On **May 7, 2002**, Administrative law Clerk, for Judge Joseph M. James, assured the Relator that the "Court's Opinion" was to be filed in the near future. See, **Appendix 3**
- 4) On **April 1, 2002**, Law Clerk, Steven H. Bowyz's, reply letter stated the Court's Opinion would be filed prior to April 30, 2002, and that the Re-sentencing Transcripts were incomplete. See, **Appendix "F"**
- 5) On **November 15, 2001**, a letter detailed why the Court's 'Opinion' was not forth coming, and that the "Resentencing Transcripts" were still sought by Counsel Robert E. Stewart and the judge's clerks. See, **Appendix "I"**
- 6) Between **November 15, 1999** through **June /2005**, the Relator pursued "Direct Appeal" regarding trial issues, which continued. While still on appeal, in **June /2005**, Relator discovered that the Late honorable Judge Robert E. Dauer passed away in his home. See, Docket Entries: 70, 85, 87, 90-94, 99, 103, 113, 115, 118, 121, and 123 all show Relator's attempts to pursue this issue continuously, which constituted due diligence. Furthermore, this instant Petition was filed just after exhausting his last appeal, **June 19, 2014**.

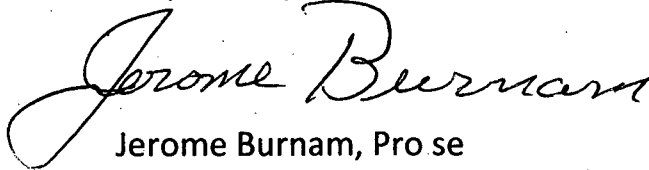
In Summation, in this instant case, it is impossible to accurately submit accurate claims that rise to the height of Pennsylvania and Federal Constitutional magnitudes where there is no Court Opinion of Record from the Re-sentencing Judge. Furthermore, the Petitioner was not even present at his Re-sentencing to afford him the opportunity to form the Court of the inaccuracies of his sentence as articulated *infra*. It may be as the Majority [in Riggins] suggests, that there will be occasion when the facts relied upon by the sentencing Court will be erroneous and when the Petitioner must be given an opportunity to correct or Refute them. Because the Petitioner in the instant case never had an opportunity to correct his Re-sentence or had the opportunity to Refute it in accordance with the Aforementioned errors, this Honorable Court should not take into consideration the Honorable Judge Robert E. Kelly's draft out opinion, because though issues raised by Judge Kelly, has already been an adjudication, by the late Post-Trial Judge Joesph H. Ridge, and sent to the late Honorable Judge Robert E. Dauer for complete determination; Petitioner state that since [we] will never know why petitioner has been remove from Death Row and a re-sentence impose, Petitioner should be granted a new trial or a new re-sentencing hearing after 'Twenty-one years of Appealing this case', and 'Thirty-one years of confinement'.

CONCLUSION

THEREFORE, Petitioner prays, after consideration of presented questions and inclusive claims, this Honorable Court will grant :

1. Writ of Mandamus, to have fulfilled plea agreement terms.
2. Or, other Relief that the Court deems will afford due process review of claims' merits.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jerome Burnam". The signature is written in black ink and is positioned above the printed name and address.

Jerome Burnam, Pro se
BA-6023: SCI-Fayette
48 Overlook Drive
LaBelle, PA 15450-1050